

Office of the Secretary of Defense

§ 199.11

case of rejection, the Director, OCHAMPUS, or a designee, shall state the reason for disagreement with the recommended decision and the underlying facts supporting such disagreement. In these circumstances, the Director, OCHAMPUS, or a designee, may have a final decision prepared based on the record, or may remand the matter to the Hearing Officer for appropriate action. In the latter instance, the Hearing Officer shall take appropriate action and submit a new recommended decision within 60 days of receipt of the remand order. The decision by the Director, OCHAMPUS, or a designee, concerning a case arising under the procedures of this section, shall be the final agency decision and the final decision shall be sent by certified mail to the appealing party or parties. A final agency decision under paragraph (e)(1) of this section will not be relied on, used, or cited as precedent by the Department of Defense in the administration of CHAMPUS.

(ii) *Referral for review by ASD(HA).* The Director, OCHAMPUS, or a designee, may refer a hearing case to the Assistant Secretary of Defense (Health Affairs) when the hearing involves the resolution of CHAMPUS policy and issuance of a final decision which may be relied on, used, or cited as precedent in the administration of CHAMPUS. In such a circumstance, the Director, OCHAMPUS, or a designee, shall forward the recommended decision, together with the recommendation of the Director, OCHAMPUS, or a designee, regarding disposition of the hearing case.

(2) *ASD(HA).* The ASD(HA), or a designee, after reviewing a case arising under the procedures of this section may issue a final decision based on the record in the hearing case or remand the case to the Director, OCHAMPUS, or a designee, for appropriate action. A decision issued by the ASD(HA), or a designee, shall be the final agency decision in the appeal and a copy of the final decision shall be sent by certified mail to the appealing party or parties. A final decision of the ASD(HA), or a designee, issued under this paragraph (e)(2) may be relied on, used, or cited as

precedent in the administration of CHAMPUS.

[51 FR 24008, July 1, 1986, as amended at 52 FR 33007, Sept. 1, 1987; 54 FR 25255, June 14, 1989; 55 FR 43341, Nov. 16, 1990; 56 FR 59880, Nov. 26, 1991; 66 FR 40607, Aug. 3, 2001; 68 FR 11973, Mar. 13, 2003; 68 FR 23033, Apr. 30, 2003; 68 FR 32362, May 30, 2003; 69 FR 6920, Feb. 12, 2004]

§ 199.11 Overpayments recovery.

(a) *General.* Actions to recover overpayments arise when the government has a right to recover money or property from an individual, partnership, association, corporation, governmental body or other legal entity, foreign or domestic, except an instrumentality of the United States because of an erroneous payment of benefits under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). A claim against several joint debtors arising from a single incident or transaction is considered to be one claim. It is the purpose of this Section to prescribe procedures for investigation, determination, assertion, collection, compromise, waiver and termination of claims in favor of the United States for erroneous benefits payments arising out of administration of CHAMPUS.

(b) *Authority—(1) Federal statutory authority.* The Federal Claims Collection Act provides the basic authority under which claims may be asserted pursuant to this section. It is implemented by joint regulations issued by the Department of Justice and the General Accounting Office, 4 CFR parts 101–105. Thereunder, the heads of federal agencies or their designees are required to attempt collection of all claims of the United States for money or property arising out of the activities of their respective agencies. These officials may, with respect to claims that do not exceed \$20,000, exclusive of interest, and in conformity with the standards promulgated in the joint regulations, compromise, suspend, or terminate collection action on such claims. Section 743 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106) authorizes the waiver (see paragraph (g)(3) of this section) of collection of overpayments otherwise due from a person after the termination of

the person's CHAMPUS eligibility, because the person became eligible for Medicare Part A by reason of disability or end-stage renal disease.

(2) *Other authority.* Occasionally, federal claims may arise which are grounded, at least in part, in authority other than the federal statute referenced above. These include, but are not limited to, claims arising under:

- (i) State worker's compensation laws.
- (ii) State hospital lien laws.
- (iii) State no-fault automobile statutes.
- (iv) Contract rights under terms of insurance policies.

(c) *Policy.* The governmental policy of avoiding unnecessary litigation in the collection of claims by the United States for money or property necessitates aggressive agency collection action. The Director, OCHAMPUS, or a designee, will insure that CHAMPUS claims asserting personnel are adequately supported to take timely and effective action. Claims arising out of any incident which has or probably will generate a claim in favor of the government will not be compromised nor will collection action be terminated by any person not authorized to take final action on the government's claim. By the Act of July 18, 1966 (28 U.S.C. 2415-2418), Congress established a statute of limitation applicable to the government in areas where previously neither limitations nor laches were available as a defense. Claims falling within the provisions of this statute will be processed expeditiously to the Department of Justice or the General Accounting Office, as appropriate, without attempting administrative collection action if such action cannot be accomplished in sufficient time to preclude the running of the statute of limitations.

(d) *Appealability.* This section describes the procedures to be followed in the recovery and collection of federal claims in favor of the United States arising from the operation of the CHAMPUS. Actions taken under this section are not initial determinations for the purpose of the appeal procedures of § 199.10 of this part. However, the proper exercise of the right to appeal benefit or provider status determinations under the procedures set

forth in § 199.10 may affect the processing of federal claims arising under this section. Those appeal procedures afford a CHAMPUS beneficiary or participating provider an opportunity for administrative appellate review in cases in which benefits have been denied and in which there is a significant factual dispute. For example, a fiscal intermediary may erroneously make payment for services which are excluded as CHAMPUS benefits because they are determined to be not medically necessary. In that event recoupment action will be initiated by the fiscal intermediary at the same time the fiscal intermediary will offer an administrative appeal as provided in § 199.10 of this part on the medical necessity issue raised by the adverse benefit determination. The recoupment action and the administrative appeal are separate actions. However, in an appropriate case, the pendency of the appeal may provide a basis for the suspension of collection in the recoupment. Obviously, if the appeal is resolved entirely in favor of the appealing party, that would provide a basis for the termination of collection action in the recoupment case.

(e) *Delegation.* Subject to the limitations imposed by law or contained in this section, the authority to assert, settle, compromise or to suspend or terminate collection action on claims arising under the Federal Claims Collection Act has been delegated to the Director, OCHAMPUS, or a designee.

(f) *Recoupment of erroneous payments—*

(1) *Erroneous payments.* Erroneous payments are expenditures of government funds which are not authorized by law or this part. Examples which are sometimes encountered in the administration of the CHAMPUS include mathematical errors, payment for care provided to an ineligible person, payment for care which is not an authorized benefit, payment for duplicate claims, inaccurate application of the deductible or co-payment, or payment for services which were not medically necessary. Claims in favor of the government arising as the result of the filing of false CHAMPUS claims or other fraud fall under the direct cognizance

of the Department of Justice. Consequently, the procedures in this section apply to such claims only when specifically authorized or directed by the Department of Justice. (See 32 CFR 101.3.)

(2) *Scope*—(i) *General*. Paragraph (f) of this section and the paragraphs following contain requirements and procedures for the assertion, collection or compromise of, and the suspension or termination of collection action on claims for erroneous payments against a sponsor, beneficiary, provider, physician or other supplier of services under the CHAMPUS. These provisions are adopted pursuant to the Federal Claims Collection Act (31 U.S.C. 3701 *et seq.*, as amended by the Debt Collection Act of 1982, Pub. L. 97-365), which requires each agency of the U.S. Government (pursuant to regulations jointly promulgated by the Attorney General and the Comptroller General) to attempt collection of federal claims in favor of the United States arising out of the activities of the agency, and 5 U.S.C. 5514, which provides for installment deduction for indebtedness to the United States, implemented by regulations issued by the Office of Personnel Management, 5 CFR part 550, and the Department of Defense, 32 CFR part 90. Paragraph (f) of this section also includes government-wide collections by salary offset under 5 U.S.C. 5514.

(ii) *Debtor defined*. As used herein, “debtor” means a sponsor, beneficiary, provider, physician, other supplier of services or supplies, or any other person who has for any reason been erroneously paid under the CHAMPUS. It includes an individual, partnership, corporation, professional corporation or association, estate, trust or any other legal entity.

(iii) *Delinquency defined*. As used herein, a debt is considered “delinquent” if it has not been paid by the date specified in the initial demand for payment (that is, the initial written notification) or applicable contractual agreement, unless other satisfactory payment arrangements have been made by that date. A debt is also considered delinquent if at any time after entering into a repayment agreement, the debtor fails to satisfy any obligations under that agreement.

(3) *Other health insurance claims*. Claims arising from erroneous CHAMPUS payments in situations where the beneficiary has entitlement to insurance, medical service, health and medical plan, or other government program, except in the case of a plan administered under Title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), through employment, by law, through membership in an organization, or as a student, or through the purchase of a private insurance or health plan, shall be recouped under one of the following procedures:

(i) Where the other health insurance plan has not already made benefit payments to the beneficiary or provider, a claim for direct reimbursement will be asserted against the plan, pursuant to the fiscal intermediary’s coordination of benefit procedures.

(ii) If the other health insurance plan has made its benefit payment prior to receiving the CHAMPUS request for reimbursement, the recoupment procedures set forth in paragraph (f) of this section will be followed.

(4) *Claims denials due to clarification or change*. In those instances where claim review results in the denial of benefits previously provided but now denied due to a change, clarification or interpretation of the public law or this part, no recoupment action need be taken to recover funds expended prior to the effective date of such change, clarification, or interpretation.

(5) *Good faith payment*. (i) The Department of Defense, through the Defense Enrollment Eligibility Reporting System (DEERS), is responsible for establishing and maintaining a file listing persons eligible to receive benefits under CHAMPUS. However, it is the responsibility of the Uniformed Services to provide eligible CHAMPUS beneficiaries with accurate and appropriate means of identification. When sources of civilian medical care exercise reasonable care and precaution in identifying persons claiming to be eligible CHAMPUS beneficiaries and furnish otherwise covered services and supplies to such persons in good faith, CHAMPUS benefits may be paid subject to prior approval by the Director,

OCHAMPUS, or a designee, notwithstanding the fact that the person receiving the services and supplies is subsequently determined to be ineligible for benefits. Good faith payments will not be authorized for services and supplies provided by a civilian source of medical care as the result of its own careless identification procedures.

(ii) When it is determined that a person was not a CHAMPUS beneficiary, the CHAMPUS fiscal intermediary and the civilian source of medical care are expected to make all reasonable efforts to obtain payment or recoup the amount of the good faith payment from the person who erroneously claimed to be a CHAMPUS beneficiary. Recoupments of good faith payments initiated by the CHAMPUS fiscal intermediary will be processed pursuant to the provisions of paragraph (f) of this section.

(6) *Recoupment procedures.* (i) *Initial action.* When an erroneous payment is discovered, the CHAMPUS fiscal intermediary normally will be required to take the initial action to effect recoupment. Such action will be in accordance with the provisions of this part and the fiscal intermediary's CHAMPUS contract and will include demands for refund or an offset against any other CHAMPUS payment becoming due the debtor. When the efforts of the CHAMPUS fiscal intermediary to effect recoupment are not successful within a reasonable time, recoupment cases will be referred to the General Counsel, OCHAMPUS, for further action in accordance with the provisions of paragraph (f) of this section. All requests to debtors for refund or notices of intent to offset shall be in writing.

(ii) *Demand for payment.* The CHAMPUS fiscal intermediary and OCHAMPUS normally shall make a total of at least three progressively stronger written demands upon the debtor in terms which inform the debtor of the consequences of his or her failure to cooperate. The initial written demand shall inform the debtor of the basis for and the amount of the indebtedness. The initial written demand shall also inform the debtor of the following: The debtor's right to inspect and copy all records pertaining to the debt; his or her right to request an ad-

ministrative review by the fiscal intermediary; that interest on the debt at the current rate as determined by the Director, OCHAMPUS, or a designee, will begin to accrue on the date of the initial demand notification; that such interest shall be waived on the debt, or any portion thereof, which is paid within 30 days of the date of the initial demand notification; that payment of the indebtedness is due within 30 days of the date of the initial demand notification; and that administrative costs and penalties will be charged pursuant to 4 CFR 102.13. The debtor also shall be informed that collection by offset against current or subsequent claims may be taken. All debtors will be offered an opportunity to enter into a written agreement to repay the indebtedness. The fiscal intermediary demand letters must be dated the same day as they are mailed. Two written demands, at 30-day intervals, normally will be made by the CHAMPUS fiscal intermediary unless a response to the first demand indicates that further demand would be futile or unless prompt suit or attachment is required in anticipation of the departure of the debtor, of his removal or transfer of assets, or the running of the statute of limitations. There should be no undue time lag in responding to any communication received from the debtor. Responses should be made within 30 days whenever feasible. If these initial efforts at collection are not productive or if immediate legal action on the claim appears necessary, the claim either will be referred promptly by the CHAMPUS fiscal intermediary to the General Counsel, OCHAMPUS, or the CHAMPUS fiscal intermediary will prepare a final notice informing the debtor that the debt is to be offset in whole or in part. When a case is referred to OCHAMPUS, the Office of General Counsel will normally prepare a third written demand unless from the record such demand appears futile or otherwise inappropriate.

(iii) *Collection by administrative offset.* Collections by offset will be undertaken administratively on claims which are liquidated or certain in amount in every instance in which this is feasible. No collection by offset may be undertaken unless a demand for

payment containing all of the procedural safeguards described in paragraph (f)(6)(ii) of this section, has been sent to the debtor. The determinations of indebtedness made for recoupment of erroneous CHAMPUS payments rarely involve issues of credibility of veracity. Erroneous CHAMPUS payments most frequently arise from claims submitted by individuals ineligible for CHAMPUS benefits; from claims submitted for services or supplies not covered by CHAMPUS; from claims in which there have been other insurance payments which reduce the CHAMPUS liability and from claims from participating providers in which payment is initially erroneously made to the beneficiary. While these recoupment claims normally involve the resolution of factual questions, these resolution nearly always require only reference to the documentary evidence compiled in the investigation and processing of the claim. The appeals system described in § 199.10 of this part affords a CHAMPUS beneficiary or participating provider an opportunity for an administrative appellate review, including, under certain circumstances, the right to oral hearing before a hearing officer. Further, there is no statutory provision for the waiver of indebtedness arising from erroneous CHAMPUS payments, other than the provisions of the Federal Claims Collection Act which allow for the compromise of claims or the termination of collection action under certain circumstances specified in paragraph (g) of this section. Consequently, the pre-offset oral hearing requirements of the Federal Claims Collection Standards (4 CFR 102.3) do not apply to the recoupment of erroneous CHAMPUS payments. CHAMPUS fiscal intermediaries may take administrative action to offset erroneous payments against other current CHAMPUS payments owing a debtor. Payments on the claims of a debtor pending at or filed subsequent to the time collection action is initiated should be suspended pending the outcome of the collection action so that these funds will be available for offset. All or any part of a debt may be offset depending upon the amount available for offset. Only the case in which no possibility of offset arises within 60

days of the initiation of collection action and on which other collection efforts have been unsuccessful or in which the debtor seeks relief from the indebtedness will be referred to the General Counsel, OCHAMPUS, by the CHAMPUS fiscal intermediary. Offset, under the provisions of 31 U.S.C. 3716, is not to be used with respect to debts owed by any state or local government. Any requests for offset that are received from other agencies shall be forwarded to the General Counsel, OCHAMPUS, for processing, as will orders for garnishment issued by courts of competent jurisdiction.

(iv) *Collection of installments.* CHAMPUS recoupment claims should be collected in one lump sum whenever possible. However, if the debtor is financially unable to pay the debt in one lump sum, payment may be accepted in regular installments by the CHAMPUS fiscal intermediary or the General Counsel, OCHAMPUS. Installment payments normally will be required on at least a monthly basis and their size will bear a reasonable relation to the size of the debt and the debtor's ability to pay. A CHAMPUS fiscal intermediary should not enter into installment agreements which extend beyond 24 months. OCHAMPUS installment agreements normally should liquidate the government's claim within 3 years. Installment payments of less than \$50 per month normally will be accepted only if justifiable on grounds of financial hardship or some other reasonable cause. Any installment agreement with a debtor in which the total amount of the deferred installments will exceed \$750 should normally include an executed promissory note.

(v) *Interest, penalties, and administrative costs.* Interest shall be charged on CHAMPUS recoupment debts and debts collected in installments in accordance with 4 CFR 102.13 and instructions issued by the Director, OCHAMPUS, or a designee. Interest shall accrue from the date on which the initial demand is mailed to the debtor. The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (that is, the Treasury tax and loan account rate). The rate of

interest, as initially assessed shall remain fixed for the duration of the indebtedness, except that where the debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, a new interest rate may be set which reflects the current value of funds to the Treasury at the time the new agreement is executed. The collection of interest on the debt or any portion of the debt, which is paid within 30 days after the date on which interest began to accrue, shall be waived. The agency may extend this 30-day period, on a case-by-case basis, if it reasonably determines that such action is appropriate. Also, the collection of interest, penalties, and administrative costs may be waived in whole or in part as a part of the compromise of a debt as provided in paragraph (g) of this section. In addition, the Director, OCHAMPUS, or a designee, may waive in whole or in part, the collection of interest, penalties, or administrative costs assessed herein, if he or she determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States. Some situations in which such a waiver may be appropriate include:

(A) Waiver of interest consistent with 4 CFR 104.2(c)(2) in connection with a suspension of collection action pending a CHAMPUS appeal under § 199.10 of this part where there is a substantial issue of fact in dispute.

(B) Waiver of interest where the original debt arose through no fault or lack of good faith on the part of the debtor and the collection of interest would impose a financial hardship or burden on the debtor. Some examples in which such a waiver may be appropriate include: a debt arising when a CHAMPUS beneficiary, who is unaware of the loss of eligibility for CHAMPUS because he or she has become eligible for Medicare, continues to file and be paid for CHAMPUS claims, resulting in erroneous CHAMPUS payments; a debt arising when a CHAMPUS beneficiary in good faith files and is paid a CHAMPUS claim for medical services or supplies which are later determined not to be benefits of CHAMPUS; and a debt arising when a CHAMPUS beneficiary is overpaid as the result of a

calculation error on the part of a fiscal intermediary or OCHAMPUS.

(C) Waiver of interest where there has been an agreement to repay a debt in installments, there is no indication of fault or lack of good faith on the part of the debtor, and the amount of interest is so large in relation to the size of the installments that the debtor can reasonably afford to pay, that it is likely the debt will never be repaid in full.

When a debt is paid in installments, the installment payments first will be applied to the payment of outstanding penalty and administrative cost charges, second to accrued interest and then to principal. Administrative costs incurred as the result of a debt becoming delinquent (as defined in paragraph (f)(2)(iii) of this section) shall be assessed against a debtor. These administrative costs represent the additional costs incurred in processing and handling the debt because it became delinquent. The calculation of administrative costs should be based upon cost analysis establishing an average of actual additional costs incurred in processing and handling claims against other debtors in similar stages of delinquency. A penalty charge, not exceeding six percent a year shall be assessed on any portion of a debt that is delinquent for more than 90 days. This charge, which need not be calculated until the 91st day of delinquency, shall accrue from the date that the debt became delinquent.

(vi) *Referral to other federal agencies for administrative offset.* As appropriate and in accordance with 4 CFR part 1023, agencies will be requested to initiate administrative offset to collect CHAMPUS debts. When a debtor is employed by the U.S. Government, or is a member or retired member of the Uniformed Service, and collection by offset against other CHAMPUS payments due the debtor cannot be accomplished, and there have been no positive responses to a demand for payment within 60 days, the Director, OCHAMPUS, or a designee, may contact the agency holding funds payable to the debtor for payment by allotment or otherwise by salary offset from current disposable pay in accordance with 37 U.S.C. 1007 or 5 U.S.C. 5514 as implemented by 32 CFR

part 90 and 5 CFR part 550. Where applicable, the request for recovery of erroneous CHAMPUS payments shall be submitted to the debtor's paying agency in accordance with 5 CFR 550.1106. Before contacting the paying agency, the Director, OCHAMPUS, or a designee, will provide the debtor written notification of the agency's intent to collect the debt by means of salary offset, authorized by 5 U.S.C. 5514. The notification will include, as a minimum:

(A) The agency's determination that a debt is owed, including the origin, nature, and the amount of the debt;

(B) The date by which payment is to be made, which will normally be 30 days from the date the demand letter is mailed;

(C) The amount, frequency, proposed beginning date and duration of the intended deductions, which will be determined in accordance with the provisions of 5 CFR 550.1104 or 32 CFR part 90, as appropriate. Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay (4 CFR 102.11). However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made unless the debtor has agreed in writing to the deduction of a greater amount. Debts must be collected in one lump-sum whenever possible. However, if the employee is financially unable to pay in one lump-sum, or the amount of the debt exceeds 15 percent of current disposable pay for an officially established pay interval, collection must be made in installments. Such installment deductions must be made to effect collection within the period of anticipated active duty or employment. If the debtor retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, offset from subsequent payments of any kind due the employee from the paying agency as of the date of separation shall be made to the extent necessary to liquidate the debt pursuant to 31 U.S.C. 3716 as implemented by 5 CFR part 550 and 32 CFR part 90. If possible, the installment payments should be sufficient in size and frequency to liquidate the government's claim in not more than 3

years. Installment payments of less than \$50 per month should be accepted only with reasonable justification. An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 will not be construed as a waiver of any rights the debtor may have under that statute or any other provisions of contract or law, unless there are statutory or contractual provisions to the contrary.

(D) An explanation of interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards;

(E) Advice that the debtor may inspect and copy government records relating to the debt or, if debtor or his or her representative cannot personally inspect the records, to request and receive a copy of such records. Requests for copies of the records relating to the debt shall be made no later than 10 days from the receipt by the debtor of the notice of indebtedness.

(F) An opportunity for a review by the agency of its determination regarding the existence or the amount of the debt, or when a repayment schedule is established other than by written agreement, concerning the terms of the repayment schedule. The debtor shall be advised that a challenge to either the existence of the debt, the amount of the debt, or the repayment schedule, must be made within 30 days of the receipt by the debtor of the notice of indebtedness or within 45 days after receipt of the records relating to the debt, if such records are requested by the debtor. A request for waiver or reconsideration should be accompanied by supporting documents indicating why the debtor believes he is not so indebted, or by a financial affidavit supporting his request for an alternative repayment schedule;

(G) Notice that the timely filing of a petition for review will stay the commencement of collection proceedings;

(H) Notice that a final decision on the review (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the review unless the employee requests, and

the agency grants, a delay in the proceedings;

(I) The opportunity, if it has not been previously provided, to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement will be signed by both the debtor and the agency's representative and will be kept in the agency's files;

(J) Notice that any knowingly false or frivolous statements, representations, or evidence may subject the debtor to:

(1) Disciplinary procedures appropriate under chapter 75 of Title 5 U.S. Code, 5 CFR part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable authority, or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001 and 1002, or any other applicable authority;

(K) Where applicable, notice of the debtor's right to appeal, under § 199.10 of this part;

(L) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will promptly be refunded to the debtor. Refunds do not bear interest unless required or permitted by law or contract;

(M) The specific address to which all correspondence regarding the debt shall be directed. Unless otherwise prohibited by law, moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund may be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments debts owed to the United States by the debtor. The General Counsel, OCHAMPUS, may forward requests for offset of debts arising from the operation of CHAMPUS to the appropriate officials of the Office of Personnel Management. These requests shall comply with the provisions of 4 CFR 102.4 and 5 CFR part 550.

(vii) *Referral to debt collection agencies.* Pursuant to the provisions of the Federal Claims Collection Standards (4 CFR 102.6), the Director, OCHAMPUS, or a designee, is authorized to enter into contracts for collection services, including contracts with private col-

lection agencies for the purpose of supplementing and strengthening the collection efforts of the Department of Defense in recouping erroneous CHAMPUS payments. Such contracts will supplement but not replace the basic collection program described herein. The authority to resolve disputes, compromise claims, terminate collection action and initiate legal action may not be delegated in such contracts but will be retained by the Director, OCHAMPUS, or a designee. Individuals or firms that enter into contracts for collection services pursuant to this paragraph are subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, federal and state laws and regulations pertaining to debt collection practices, including the Fair Debt Collection Practices Act, 15 U.S.C. 1692. Debt collection contractors shall be required to account strictly for all amounts collected and must agree to provide any data contained in their files relating to 4 CFR 105.2(a) (1), (2) and (3). Contracts for commercial collection services must comply with 32 CFR part 90.

(viii) *Referrals to consumer reporting agencies.* The Director, OCHAMPUS, or a designee, is authorized to provide for the reporting of delinquent debts to consumer reporting agencies. Delinquent debts are those which are not paid or for which satisfactory payment arrangements are not made by the due date specified in the initial notification of indebtedness, or those for which the debtor has entered into a written payment agreement and installment payments are past due 30 days or longer. These referrals may be made only after publication of a "routine use" for the disclosures involved as required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a. Procedures developed for such referrals must also insure that an accounting of the disclosures is kept which is available to the debtor; that the consumer reporting agencies are provided with corrections and annotations of disagreements by the debtor; and that reasonable efforts

are made to assure that the information to be reported is accurate, complete, timely and relevant. When requested by a consumer reporting agency, verification of information disclosed will promptly be provided. Once a claim has been reviewed and determined to be valid, a complete explanation of the claim will be given the debtor. When the claim is overdue, the individual will be notified in writing that payment is overdue; that within 60 days, disclosure of the claim shall be made to a consumer reporting agency unless satisfactory payment arrangements are made or unless the debtor requests an administrative review and demonstrates some basis on which the debt is legitimately disputed; and of the specific information to be disclosed to the consumer reporting agency. The information to be disclosed to the consumer reporting agency will be limited to information necessary to establish the identity of the debtor, including name, address and taxpayer identification number; the amount, status and history of the claim; and the agency or program under which the claim arose. Reasonable action will be taken to locate an individual for whom a current address is not available.

(ix) *Use and disclosure of mailing addresses.* In attempting to locate a debtor in the collection of a debt under this section, the Director, OCHAMPUS, or a designee, may send a written request to the Secretary of the Treasury, or a designee, for current address information from records of the Internal Revenue Service. These requests will comply with the provisions of 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service. Disclosure of a mailing address so obtained may be made pursuant to 4 CFR 102.18(b) and 31 U.S.C. 3711.

(g) *Compromise, waiver, suspension or termination of collection actions arising under the Federal Claims Collection Act—*

(1) *Basic considerations.* Federal claims against the debtor and in favor of the United States arising out of the administration of the CHAMPUS may be compromised or collection action taken thereon may be suspended or terminated in compliance with the Federal Claims Collection Act, 31 U.S.C. 3711(a)(2) as implemented by the Fed-

eral Claims Collection Standards, 4 CFR parts 101 through 105.

(2) *Authority.* CHAMPUS fiscal intermediaries are not authorized to compromise or to suspend or terminate collection action on federal CHAMPUS claims. Only the Director, OCHAMPUS, or a designee, and Uniformed Service claims officers acting under the provisions of their own regulations, are so authorized.

(3) *Waiver of collection of erroneous payments due from certain persons unaware of loss of CHAMPUS eligibility.* (i) The Director, OCHAMPUS may waive collection of payments otherwise due from certain persons as a result of health benefits received under this part after the termination of the person's eligibility for such benefits. Waiver may be granted if collection of such payments would be against equity and good conscience and not in the best interest of the United States. These criteria are met by a finding that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the person who received the erroneous payment or any other person having an interest in obtaining such waiver.

(ii) *Persons eligible for waiver.* The following persons are eligible for waiver:

(A) A person who:

(1) Is entitled to Medicare Part A by reason of disability or end stage renal disease;

(2) In the absence of such entitlement, would have been eligible for CHAMPUS under 10 U.S.C. 1086; and

(3) At the time of the receipt of such benefits, was under age 65.

(B) Any participating provider of care who received direct payment for care provided to a person described in paragraph (g)(ii)(A) of this section pursuant to an assignment of benefits from such person.

(iii) The authority to waive collection of payments under this section shall apply with regard to health benefits provided during the period beginning January 1, 1967, and ending on the later of: the termination date of any special enrollment period for Medicare Part B provided specifically for such persons; or July 1, 1996.

(4) *Basis for compromise.* A claim may be compromised hereunder if the government cannot collect the full amount if:

(i) The debtor or the estate of a debtor does not have the present or prospective ability to pay the full amount within a reasonable time;

(ii) The debtor refuses to pay the claim in full and the government is unable to enforce collection of the full amount within a reasonable time by enforced collection proceedings;

(iii) There is real doubt concerning the government's ability to prove its case in court for the full amount claimed either because of the legal issues involved or a *bona fide* dispute as to the facts; or

(iv) The cost of collecting the claim does not justify enforced collection of the full amount.

(5) *Basis for suspension.* Collection action may be suspended for either of the following reasons if future collection action may be sufficiently productive to justify periodic review and action on the claim giving consideration to its size and the amount which may be realized thereon:

(i) The debtor cannot be located; or

(ii) The debtor is unable to make payments on the government's claim or effect a compromise at the time, but the debtor's future prospects justify retention of the claim for periodic review and action and:

(A) The applicable statute of limitations has been tolled or started running anew; or

(B) Future collection action can be effected by offset, notwithstanding the statute of limitations with due regard to the 10-year limitation prescribed by 31 U.S.C. 3716(c)(1); or

(C) The debtor agrees to pay interest on the amount of the debt on which collection action will be temporarily suspended, and such temporary suspension is likely to enhance the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(iii) Consideration may be given by the Director, OCHAMPUS, or a designee, to suspend collection action pending action on a request for a review of the government's claim against the debtor or pending an administrative

review under § 199.10 of this part of any CHAMPUS claim or claims directly involved in the government's claim against the debtor. Suspension under this paragraph will be based upon appropriate consideration, on a case-by-case basis as to whether:

(A) There is a reasonable possibility that the debt (in whole or in part) will be found not owing from the debtor;

(B) The Government's interest would be protected if suspension were granted by reasonable assurance that the debt would be recovered if the debtor does not prevail; and

(C) Collection of the debt will cause undue hardship.

(6) *Basis for termination.* Collection action may be terminated for one or more of the following reasons:

(i) The United States cannot collect or enforce collection of any significant sum from the debtor having due regard to the judicial remedies available to the government, the debtor's future financial prospects and the exemptions available to the debtor under state and federal law;

(ii) The debtor cannot be located, and either:

(A) There is no security remaining to be liquidated, or

(B) The applicable statute of limitations has run and the prospects of collecting by offset, notwithstanding the bar of the statute of limitations, are too remote to justify retention of the claim;

(iii) The cost of further collection action is likely to exceed any recovery;

(iv) It is determined that the claim is legally without merit; or

(v) Evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment are unavailing.

(7) *Factors considered.* In determining whether a claim will be compromised, or collection action terminated or suspended, the responsible CHAMPUS collection authority will consider the following factors:

(i) Age and health of the debtor, present and potential income, inheritance prospects, possible concealment or improper transfer of assets and the availability of assets or income which

may be realized upon by enforced collection proceedings;

(ii) Applicability of exemptions available to a debtor under state or federal law;

(iii) Uncertainty as to the price which collateral or other property may bring at forced sale; or

(iv) The probability of proving the claim in court, the probability of full or partial recovery, the availability of necessary evidence and related pragmatic considerations.

(8) *Amount of compromise.* The amount acceptable in compromise will be reasonable in relation to the amount that can be recovered by enforced collection proceedings. Consideration shall be given to the following:

(i) The exemptions available to the debtor under state and federal law;

(ii) The time necessary to collect the debt;

(iii) The litigative probabilities involved; and

(iv) The administrative and litigative costs of collection where the cost of collecting the claim is a basis for compromise.

(9) *Payment of compromised claims.* (i) *Time and manner.* Compromised claims are to be paid in one lump sum if possible. However, if payment of a compromise is necessary, a legally enforceable compromise agreement must be obtained. Payment of the amount that CHAMPUS has agreed to accept as a compromise in full settlement of a CHAMPUS claim must be made within the time and in the manner prescribed in the compromise agreement. Any such compromised claim is not settled until the full payment of the compromised amount has been made within the time and the manner prescribed. Compromise agreements must provide for the reinstatement of the prior indebtedness, less sums paid thereon, and acceleration of the balance due upon default in the payment of any installment.

(ii) *Failure to pay the compromised amount.* Failure of any debtor to make payment as provided in the compromise agreement will have the effect of reinstating the full amount of the original claim, less any amounts paid prior to the default.

(10) *Effect of compromise, waiver, suspension or termination of collection action.* Pursuant to the Internal Revenue Code, 26 U.S.C. 6041, compromises and terminations of undisputed debts not discharged in a Title 11 bankruptcy case and totaling \$600 or more for the year will be reported to the Internal Revenue Service in the manner prescribed for inclusion in the debtor's gross income for that year. Any action taken under paragraph (g) of this section regarding the compromise of a federal claim, or waiver or suspension or termination of collection action on a federal claim is not an initial determination for purposes of the appeal procedures § 199.10.

(h) *Referrals for collection—(1) Prompt referral.* Federal claims of \$600 or more on which collection action has been taken in accordance with the provisions of this section and which cannot be collected or compromised or on which collection action cannot be suspended or terminated, as provided herein, will be promptly referred by the Director, OCHAMPUS, or a designee, to the Department of Justice for litigation in accordance with 4 CFR part 105. Such referrals will be made as early as possible consistent with aggressive collection action by CHAMPUS fiscal intermediaries and OCHAMPUS and well within the period for bringing a timely suit against the debtor. Ordinarily referrals will be made within one year of the OCHAMPUS final determination of the fact and the amount of the debt.

(2) *Report of prior collection actions.* The Director, OCHAMPUS, or a designee, will prepare a Claims Collection Litigation Report (CCLR) for each case referred for collection under the provisions of this section. The CCLR shall also be used when a claim is referred to the Department of Justice in order to obtain approval of that Department with respect to compromise, suspension, or termination when such approval is required by 4 CFR 103.1(b) and 104.1(b). The CCLR will include, as a minimum, the following:

(i) A checklist or brief summary of the actions previously taken to collect or compromise the claim. If any of the

required administrative collection actions have been omitted, the reason for its omission must be provided.

(ii) The current address or the debtor, or the same and address of the agent for a corporation upon whom service may be made. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the Department of Justice for the institution of foreclosure or other proceedings, in which the current address of any party is unknown, will be accompanied by a listing of the prior known addresses of such party and a statement of the steps taken to locate that party.

(iii) Reasonably current credit data indicating that there is a reasonable prospect of effecting enforced collection from the debtor, having due regard for the exemptions available to the debtor under state and federal law and the judicial remedies available to the government. Such credit data may take the form of a commercial credit report; an agency investigative report showing the debtor's assets, liabilities, income, and expenses; the individual debtor's own financial statement executed under penalty of perjury reflecting the debtor's assets, liabilities, income, and expenses; or an audited balance sheet of a corporate debtor. Such credit data may be omitted if a surety bond is available in an amount sufficient to satisfy the claim in full; the forced sale value of any security available for application to the government's claim is sufficient to satisfy the claim in full; the debtor is in bankruptcy or receivership; the debtor's liability to the government is fully covered by insurance, in which case such information as can be developed concerning the identity and address of the insurer and the type and amount of insurance coverage will be furnished; or the nature of the debtor is such that credit data is not normally available or cannot reasonably be obtained, for example, a unit of state or local government.

(3) *Preservation of evidence.* The Director, OCHAMPUS, or a designee, will take such action as is necessary to ensure that all files, records and exhibits on claims referred hereunder are properly preserved.

(i) *Claims Involving Indications of Fraud, Filing of False Claims or Misrepresentation.*

Any case in which there is an indication of fraud, filing of false claims or misrepresentation will be promptly referred to the Director, OCHAMPUS, or a designee, for processing. The Director, OCHAMPUS, or a designee, will investigate and evaluate the case and either refer the case to the appropriate investigative law enforcement agency or return the claim for other appropriate administrative action, including collection action under this section. Payment on all CHAMPUS beneficiary or provider claims in which fraud, filing false claims or misrepresentation is suspected will be suspended until payment or denial of the claim is authorized by the Director, OCHAMPUS, or a designee. Collection action on all federal claims in which a suspicion of fraud, misrepresentation or filing false claims arises will be suspended pending referral to the appropriate law enforcement agencies by the Director, OCHAMPUS, or a designee. Only the Department of Justice has authority to compromise or terminate collection action on such claims.

[51 FR 24008, July 1, 1986, as amended at 62 FR 35097, June 30, 1997; 63 FR 27678, May 20, 1998]

§ 199.12 Third party recoveries.

(a) *General.* This section deals with the right of the United States to recover from third-parties the costs of medical care furnished to or paid on behalf of TRICARE beneficiaries. These third-parties may be individuals or entities that are liable for tort damages to the injured TRICARE beneficiary or a liability insurance carrier covering the individual or entity. These third-parties may also include other entities who are primarily responsible to pay for the medical care provided to the injured beneficiary by reason of an insurance policy, workers' compensation program or other source of primary payment.

Authority—(1) *Third-party payers.* This part implements the provisions of 10 U.S.C. 1095b which, in general, allow the Secretary of Defense to authorize certain TRICARE claims to be paid, even though a third-party payer may